SUPREME COURT OF THE UNITED STATES
Mr. Justice Antonin Scalia
Circuit Justice for the Fifth Circuit

(6)

No. 00A406

00-1255

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Petitioner,

v.

FRANK G. VOLLOR,
OLIVER E. DIAZ, JR.,
and
BILLY JOE LANDRUM
Respondents.

FILED
NOV 6 2000
OFFICE OF THE CLERK
SUPREME COURT, U.S.

SUPPLEMENT TO MOTION FOR EMERGENCY STAY OF A PRIOR RESTRAINT ON POLITICAL SPEECH

Petitioner hereby supplements the Motion for Emergency Stay of a Prior Restraint on Political Speech ("Emergency Motion") that it delivered to the Supreme Court on Saturday, November 4, 2000 (which motion may not be officially filed until Monday, November 6). This Supplement

18 pp

advises the Court that two other candidates for seats on the Mississippi Supreme Court have obtained *ex parte* orders essentially identical to the order granted to Judge Vollor on November 3, 2000. Accordingly, this Supplement seeks emergency relief against the two new prior restraints for the same reasons discussed in the Chamber's Emergency Motion, and names the candidates who obtained the new prior restraints as party respondents.

The *Ex Parte* Prior Restraint Obtained By Judge Diaz

1. On Saturday, November 4, the Chancery Court of Harrison County, Mississippi, acting *ex parte*, entered a Temporary Restraining Order against the Chamber and several television broadcasting stations that imposes a prior restraint on Chamber political advertisements "in support of Keith Starett and against Oliver E. Diaz, Jr., concerning the Southern District election for the Supreme Court of Mississippi." A copy of the TRO and of the application therefor are Exhibit 5 hereto.[1]

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[1] The Application omits two of its exhibits. Exhibit A corresponds to the Memorandum Opinion that is included in Exhibit 3 to the Chamber's Emergency Motion. Exhibit B is the TRO obtained by Judge Vollor that is Exhibit 1 to the Chamber's Emergency Motion.

2. The Diaz Application (§ V.) describes the events leading to the Vollor prior restraint as "an identical proceeding," and states that the targeted ads are "virtually identical" to those enjoined by Judge Vollor. So far as appears, no further information about any particular Chamber ad was submitted in support of the Application, with the exception of a description of the "Judge Keith Starrett Advertisement" that appears at page 7 of the Memorandum Opinion of the Southern District (Exhibit __ to the Chamber's Original Motion). The Chamber understands the prior restraint to encompass that ad, and any similar ads. Television station defendants similarly understand the prior restraint to require them to take down the Chamber's ads relating to either Judge Diaz or his opponent, Judge Starrett. The ads have been taken down because of the prior restraint.

4. Time does not permit the Chamber again to seek relief from the Mississippi Supreme Court, on which Judge Diaz sits. That Court's November 3 ruling denying the Chamber's attempt to stay the Vollor TRO as without merit demonstrates that an application with respect to the TRO obtained by Judge Diaz would be futile.

5. Judge Diaz is one of three candidates for the same seat. The Chamber believes it is likely that there will be a run-off election in that race, with the run-off vote to be held on November 21. The Chamber will run ads during the run-off period if permitted to do so.

6. The Chamber asks that the prior restraint obtained by Judge Diaz be stayed for the same reasons stated in its original Emergency Motion with respect to the November 3 TRO concerning the Vollor race. The Chamber is serving both its original Emergency Motion and this Supplement on Judge Diaz and has named him as a respondent.

The *Ex Parte* Prior Restraint Obtained By Judge Billy Joe Landrum

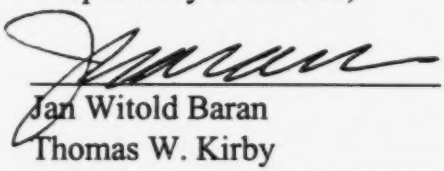
7. As this Supplement was being finalized, the Chamber was informed by telephone that yet another *ex parte* prior restraint against its political speech. The new TRO was obtained by Judge Billy Joe Landrum, who also is a candidate for a seat on the Mississippi Supreme Court. On information and belief, it was obtained in similar circumstances and imposes similar restraints to the TROs obtained by Judges Vollor and Diaz.

8. If a copy of that prior restraint can be obtained promptly, it will be attached hereto as Exhibit 6. Otherwise, it will be submitted later.

Conclusion

The two new prior restraints should be stayed for the same reasons stated in the Chamber's original Emergency Motion with respect to the November 3 TRO concerning the Vollor race. The Chamber is serving both its Emergency Motion and this Supplement on Judge Diaz and will serve Judge Landrum as soon as his counsel can be identified.

Respectfully submitted,



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Counsel for Petitioners

Of counsel:

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PHELPS DUNBAR, LLP
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Jackson, Mississippi 39225

November 5, 2000

CERTIFICATE OF SERVICE

I certify that on November 5, 2000, before 7:00 p.m. a.m., I caused a copy of the foregoing Supplement to be faxed and mailed to counsel for respondents at the addresss and fax numbers shown below. A copy of the original Emergency Motion also was faxed to counsel for Judge Diaz. I also gave telephone notice at the office numbers shown below. If home telephone numbers can be obtained, I will give notice to those numbers as well. Judge Landrum will be similarly served as soon as his counsel is identified.

Paul Kelly Loyacono
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1025 Jackson St.
Vicksburg, MS 39181

Fax: (601) 638-8296
Ph: (601) 638-8282

Joseph A. Lococo
LOCOCO & LOCOCO
PO Box 6014
D'Ivberville, MS 39532

Fax: (228) 392-3890
Ph. (228) 392-2799

Thomas W. Kirby

EXHIBIT 5

Twst / 11-4-00 2:3[illegible] pm

IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI

OLIVER E. DIAZ, JR. **PLAINTIFF**

VERSUS **CAUSE NO. _____**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA; WLOX-TV, GULFPORT/BILOXI, MS; WDAM-TV, HATTIESBURG, MS **DEFENDANTS**

TEMPORARY RESTRAINING ORDER

CAME the Applicant, Oliver E. Diaz, Jr., through counsel and by affidavit as required by Rule 65 MRCP, and the Court, having heard the argument of counsel and being advised in the premises, including the affidavits of the Applicant and his counsel, finds that the relief sought should be granted. The Court find, orders and adjudges as follows:

1. The Court finds that it has jurisdiction for the purposes of a Rule 65 motion.

2. The Court notes that Plaintiff's counsel contacted this judge on Saturday afternoon and that the Court, having heard the ex parte motion, was able to contact 3 of the district's four Chancellors and discuss the merits of the application; further, the Court believes there is sufficient merit to the injunction application to issue this order.

3. The Court grants this order without notice because there is insufficient time to notify all parties and schedule a hearing for the following reasons: Plaintiff has alleged a failure to comply with Mississippi Election Laws by the Defendant, the Chamber of Commerce of the United States of America ; Plaintiff has alleged litigation in federal courts to decide the question of whether Defendant Chamber of Commerce was subject to

BEST AVAIL

Mississippi Election Laws regarding contributions was not decided by the Court of its choosing until November 2, 2000, only two business days prior to the election.

4. The Court finds that Plaintiff has alleged that irreparable and immediate harm would accrue to Oliver E. Diaz, Jr., as his campaign would be subject to unfair television advertisements in support of his opponent, Keith Starrett, contrary to Mississippi Election Laws due to the shortness of time remaining before the election and his inability to lawfully match the financial contributions of television advertising of the Chamber of Commerce of the United States of America on behalf of his opponent.

IT IS THEREFORE, ORDERED AND ADJUDGED AS FOLLOWS:

1. ORDERED AND ADJUDGED, that each of the Defendants, their agents, servants, and employees are hereby enjoined from transmitting any television advertisement, which is paid for or produced by the Chamber of Commerce of the United States of America, its agents, servants, or employees, in support of Keith Starrett and against Oliver E. Diaz, Jr., concerning the Southern District election for the Supreme Court of Mississippi. Specifically, Separate Defendant WDAM-TV, Hattiesburg, Ms., is enjoined only as to television transmission into Harrison County, Hancock County, and Stone County, all within this Court's district.

2. ORDERED AND ADJUDGED, that the Applicant is hereby required to post with this Court a bond in the amount of One Thousand Dollars ($1,000.00), and this Order shall be immediately binding on the parties on the 4th day of November, 2000, as of 2:30 p.m., and service upon each Defendant may be had herein by mail, telephone, facsimile, or by actual notice otherwise.

ABLE COPY

3. ORDERED AND ADJUDGED, that the Court sets this matter for review on Monday, November 6, 2000, at 1:30 p.m., at the Gulfport Courthouse, should any Defendant feel aggrieved by this injunction; however, unless therein set aside, this Order shall expire ten (10) days after entry or after further Order of this Court pursuant to Rule 65.

SO ORDERED, this the 4th day of November, 2000, at 2:30 p.m.

CHANCELLOR

IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI

OLIVER E. DIAZ, JR. **PLAINTIFF**

VERSUS **CAUSE NO. _____**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA; WLOX-TV, GULFPORT/BILOXI, MS; WDAM-TV, HATTIESBURG, MS **DEFENDANTS**

APPLICATION FOR TEMPORARY RESTRAINING ORDER

COMES NOW the Plaintiff, Oliver E. Diaz, Jr., and applies for a Temporary Restraining Order against the above-named Defendants, and in support of his application for a Temporary Restraining Order would show unto this Court the following:

I.

The application involves the contracting between the Chamber of Commerce of the United States of America, hereinafter referred to as "Chamber", and the other defendant television stations. The defendant television stations have as their principal place of business the Southern Judicial District of the State of Mississippi, wherein an election is being contested for a seat on the Mississippi Supreme Court between Judge Billy Joe Landrum and Judge Keith Starrett, and Oliver E. Diaz, Jr., your Plaintiff herein.

II.

In the absence of immediate equitable relief there will be irreparable harm to the Plaintiff. With every transmission or communication of television advertising paid for by the Chamber, public opinion is being affected and voting decisions by the viewers of those illegal advertisements are being determined. The election day is November 7, 2000.

III.

The television ads on behalf of Judge Keith Starrett and against Oliver E. Diaz, Jr. produced and funded by the Chamber of Commerce of the United States of America are indirect expenditures which are subject to the contribution limits and reporting requirements of Mississippi Code Annotated, Section 23-15-801. (See the opinion of Honorable Henry T. Wingate, which is attached hereto as Exhibit "A".) The Chamber of Commerce of the United States of America has violated the spending limit provision of the Mississippi Election Laws which cap individual expenditures at $5,000.00 per person or $1,000.00 per corporation. The Chamber of Commerce of the United States of America is a non-profit corporation which operates in Washington, D.C.

IV.

That upon a further evidentiary hearing for a preliminary injunction, there is an overwhelming likelihood that this Court will also find these expenditures illegal and, thus, grant the relief sought herein. On November 2, 2000, the United States District Court, U.S. District Judge Henry T. Wingate, filed its Memorandum Opinion and Order. That Order ruled that the advertisements on behalf of Judge Jim Smith clearly express advocacy and are offensive under applicable law, *Buckley v. Valeo*, 424 US 1, 96 Sup. Ct. 612 (1976) Judge Wingate found that the Defendant, Chamber, was subject to Mississippi Election Laws concerning television ads communicated in that particular Supreme Court race between Judge Frank Vollor and Judge Jim Smith.

V.

In an identical proceeding, the Circuit Court of the First Judicial District of Warren County, William Singletary, Chancellor, enjoined Central District TV stations from running

virtually identical ads against Judge Frank Vollor illegally funded by the Defendant, Chamber, a copy of said order is attached hereto as Exhibit "B".

VI.

A Motion to Stay the Temporary Restraining Order filed by the Chamber was denied by a three (3) Judge panel of the Mississippi Supreme Court on November 3, 2000.

VII.

The Plaintiff, Oliver E. Diaz, Jr., is asking this Court for the immediate enforcement of Mississippi Election Laws. The relief sought is narrowly crafted in order to achieve the proper legal result and constitutes the least restrictive means to bring the Chamber of Commerce of the United States of America into compliance with Mississippi law and enjoin its continued violation of Mississippi Election Law. Those television and communication defendants who contracted with the Chamber or its agents, servants, and employees to communicate this illegal advertising should also be enjoined from accepting these ads or communicating these ads in any way to the public by any method of transmission.

VIII.

This Court should immediately enter its Order enjoining the Chamber of Commerce of the United States of America and all other defendant television stations from airing those television commercials being aired and paid for by the Chamber in support of Judge Keith Starrett or against the election of Judge Oliver E. Diaz, Jr. This Order should go into effect immediately, without further delay or immediate and irreparable injury, loss, and damage will result to Oliver E. Diaz, Jr., your Applicant herein, before the adverse parties or their attorneys can be heard in opposition. (See Affidavit of Oliver E. Diaz, Jr., which is attached hereto as Exhibit "C".)

IX.

The Defendant, Chamber, has created this emergency time constraint because of its failure to comply with Mississippi law and then its application to the United States District Court for Declaratory Relief, which was just issued on November 2, 2000, as shown by attached exhibit.

X.

The Affidavit of the Attorney for Applicant is attached hereto as Exhibit "D" and made a part hereof, as required by Rule 65 MRCP.

XI.

There will be no loss to the Chamber, the primary Defendant, and there can be no loss to the communication defendants for being restrained from running ads not in compliance with or in violation of Mississippi Election Laws. In any event, only a minimal bond should be required.

XII.

For these and other reasons orally presented to the Court, the within relief should be granted without note.

RESPECTFULLY SUBMITTED, this the 4th day of November, 2000.

JOSEPH A. LoCOCO
MISSISSIPPI BAR #9537
LoCOCO & LoCOCO
POST OFFICE BOX 6014
D'IBERVILLE, MS 39532
Telephone: 228-392-2799

AFFIDAVIT OF OLIVER E. DIAZ, JR.

STATE OF MISSISSIPPI

COUNTY OF HARRISON

PERSONALLY APPEARED BEFORE ME, the undersigned, after having been duly sworn, Oliver E. Diaz, Jr. states as follows:

1. That I am an adult resident citizen of Harrison County, Mississippi.
2. That I am presently a candidate for a seat on the Mississippi Supreme Court from the Southern District of Mississippi and that I am opposed in that election by Judge Billy Joe Landrum and Judge Keith Starrett.
3. That presently there are being run various television advertisements in support of Judge Keith Starrett and against your Affiant, Oliver E. Diaz, Jr., which are being paid for by the Chamber of Commerce of the United States of America, hereinafter referred to as "Chamber."
4. That the chamber has violated Mississippi Election Laws, particularly Section 23-15-801, Mississippi Code Annotated, primarily with regard to contribution limits and reporting requirements.
5. That the Chamber has continually violated the spending limit, which limits each individual expenditure to five thousand dollars ($5,000.00) per person or one thousand dollars ($1,000.00) per corporation.
6. That the illegal spending by the Chamber is vastly prejudicial to the changes of election of the Affiant, who has obeyed all of the election and reporting laws of the State of Mississippi. This "last minute" Application for Temporary Restraining Order is made necessary by the failure of the Chamber to obey Mississippi Election Laws; and this matter was decided by the U. S. District

EXHIBIT
C

court for the Southern District of Mississippi on November 2, 2000, which ruled that Mississippi Election Law did apply to the Chamber in this instance.

7. Your Affiant is asking this Court to require enforcement of Mississippi Election Laws and to enjoin the Chamber and the defendant television stations from continuing to violate the laws by running the chamber ads concerning the supreme Court race between this Affiant, Judge Billy Joe Landrum and Judge Keith Starrett.

8. The matters contained in the application for Temporary Restraining Order are true and correct to the best of my knowledge and belief as set out therein by my attorney.

9. If this Temporary Restraining Order is not granted, my chances in this election will be greatly harmed because of the illegal actions of the Chamber and the contracting television defendants. The election is just two (2) business days after the rendition of the Order of the U.S. District Court concerning this matter brought by the Chamber.

10. FURTHER AT THIS TIME, AFFIANT SAYETH NOT.

WITNESS MY SIGNATURE, this the 4th day of November, 2000.

OLIVER E. DIAZ, JR.

SWORN TO AND SUBSCRIBED BEFORE ME, this the 4th day of November, 2000.

NOTARY PUBLIC

My Commission Expires:

10/26/02

RULE 65 AFFIDAVIT OF ATTORNEY

STATE OF MISSISSIPPI

COUNTY OF HARRISON

1. I, Joseph A. LoCoco, am attorney for the Plaintiff in the application of Oliver E. Diaz, Jr. for a Temporary Restraining Order.

2. The list of television stations in my possession has only the address and general manager and I do not know the attorney for the Chamber of Commerce of the United States of America or its address, except Washington, D.C, but believe their attorney is Mike Wallace. Efforts to contact him at his office have been unsuccessful.

3. That I was furnished on this date with the Order signed by U.S. District Court Judge Henry T. Wingate, who found that the Chamber of Commerce of the United States of America was subject to the election laws of this State.

4. That there is no time to notify all Defendants, as the Order of Judge Wingate was signed November 2, 2000, and it was the Chamber of Commerce of the United States of America which brought the Action for Declaratory Relief in his Court. There are remaining only one (1) business day until the election of November 7, 2000.

5. Notice should not be required because this immediate relief is made necessary by the failure of the Chamber of Commerce of the United States of America to abide by Mississippi Election Laws. The Chamber of Commerce of the United States of America had filed for Declaratory Judgment on the question of whether it was subject to Mississippi Election Laws, and it chose the time and forum for that

EXHIBIT
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decision, which was just rendered on November 2, 2000 by the U. S. District Court for the Southern District of Mississippi.

6. The cause of there not being adequate time for notice is only the fault of the Defendant, the Chamber of Commerce of the United States of America, and at no fault of the Plaintiff, Oliver E. Diaz, Jr., or his attorney.

WITNESS MY SIGNATURE, this the 4th day of November, 2000.

JOSEPH A. LoCOCO

SWORN TO AND SUBSCRIBED BEFORE ME, this the 4th day of November, 2000.

NOTARY PUBLIC

My Commission Expires:

10/26/02